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HAYNES BEFFEL & WOLFELD LLP			EXAMINER	
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HALF MOON BAY, CA 94019				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/766,539

Applicant(s)

DVORAK, ROBERT E.

Examiner

BETH VAN DOREN

Art Unit

3623

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 120-126 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 120-126 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a non-final office action in response to communications received 12/05/2007. Claims 1 and 126 have been amended. Claims 116 and 127 have been canceled. Claims 1-23 and 120-126 are pending.

Examiner Note

2. Examiner disagrees with Applicant's interview summary of 10/30/2007. Examiner Jeanty did not make such agreements with regards to claim 1, but rather stated that claim 127 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Examiner further notes that the outstanding 35 USC 112, second paragraph, rejections set forth in the previous office action have not been addressed.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-23 are rejected under 35 U.S.C. 101 because they do not recite subject matter within one of the statutory classes. Claim 1 recites "an improved management decision support system" comprising a presentation demand calendar utilized by a program and a schedule. A calendar and a schedule would be construed as computer programs or software per se. Computer programs and software are merely a set of instructions capable of being executed by a computer. Computer programs and software are not considered to be statutory processes or machines. Therefore, there must be some functional act performed by a computer or computer element on

the software/computer program to impart statutory subject matter. Further, the preamble recites a computer system with memory. However, there is no indication that the presentation demand calendar utilized by a program or the schedule is stored on this medium. Even so, instructions stored on a medium would be considered functional descriptive material, which by itself is non-statutory.

Claims 2-23 depend from claim 1 and therefore contain the same deficiencies.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-23 and 120-125 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites an improved system, the improvement comprising a calendar and a schedule. Therefore, it is unclear how the body of the claim matches the “system” set forth in the preamble, as the body of the claim does not structurally match the statutory class set forth in the preamble. Clarification is required.

Claims 2-23 depend from claim 1 and therefore contain the same deficiencies.

Claims 120-125 depend from claim 126 and recite “wherein the presentation demand type selected”. There is insufficient antecedent basis for this limitation in each of the claims. Claim 126 recite “a plurality of retail presentation events having presentation demand types” and “a user setting for the presentation demand type selector”, but never equates the user setting with the “plurality of retail presentation events” or with a “presentation demand type selected” In

each instance, the limitation has been construed as wherein a setting for the presentation demand type selector causes. Clarification is required.

Allowable Subject Matter

7. Claims 120-126 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this and the previous Office action.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvater (U.S. 6,609,101).

As per claim 1, Landvater teaches an improved management decision support system, including a computer system having memory and resources, a retail demand forecasting program applying one or more forecasting approaches, running on the computer system and generating output, and a set of analysis programs, running on the computer system and utilizing the output, said analysis programs generating at least one of (a) order of goods from a supplier-related data, (b) allocation of the goods to be shipped by the supplier-related data, or (c) distribution of goods to selling locations-related data (See figures 1, 2, 5, 9, and column 8, lines 9-40), the improvement comprising:

a presentation demand calendar utilized by the forecasting program to generate the output, said presentation demand calendar associating with a plurality of good-selling location pairs, data including a good identifier, a selling location identifier, one or more presentation quantities each associated with a start date and a stop date, and a presentation demand type selector that selects one of a plurality of alternative extents to which the good can be sold out of the presentation quantity between the start and the stop date (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein a presentation demand calendar is used with the forecasting program to determine stock and replenishment for each of the retail locations. Schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation treatment) and quantities needed for these configurations are stored in the system with a start date and the next start date for a future configuration, the start date for the future configuration being a stop date for the current configuration); and

a schedule stored in memory of display fixtures, including fixture counts and capacities in the plurality of locations, further including fixture identifiers for a plurality of types at particular selling location (Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system. See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are

stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date is stored, as well as the next start date for a future configuration, and thus the stop date of a current configuration. Further, display, types are discussed, such as a shelf or a floor model);

wherein particular presentation events are associated with use of particular display types to display particular items and at least some of the presentation quantity requirements utilized by a forecasting program are derived from the use of the particular display types to display the particular items (See column 14, lines 25-58, wherein different displays are scheduled, such as shelves and floor models. See also figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date is stored, as well as the next start date for a future configuration, and thus the stop date of a current configuration. Further, display, types are discussed, such as a shelf or a floor model).

However, while Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system, Landvater does not expressly disclose that the displays and display types are specific display fixtures including fixture identifiers, fixture types, and quantities of fixtures.

Landvater et al. is concerned with inventory planning, scheduling, and maintaining enough inventory to meet the needs of retail events. Landvater specifically discloses the retail events of displays/presentations with presentation demand quantities for maintaining the displays, as well as different types of display (i.e. different shelf configurations and shelves versus floor models). Landvater stores information concerning these presentations and displays in the system. Examiner takes official notice that different fixtures types and the scheduling of different fixture types for store resets and remodels are well-known in the retail industry. Examiner further points out the recitation of display fixtures is non-functional data since the data is merely being stored, and therefore the system is capable of storing such data, regardless of what the data represents. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include data representing the fixtures and fixture types in the data already stored by Landvater concerning displays, shelves, and capacities associated with their presentation in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claims 2 and 3, Landvater teaches wherein the start date is stored explicitly and the stop date is stored implicitly and associated with a memory location in which the presentation quantity is stored (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and the stop date is implicitly stored).

However, Landvater does not expressly disclose that the start date is implicitly stored and that the stop date is explicitly stored.

Landvater discloses shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date for the current configuration is stored, as well as the next start date for a future configuration, and thus the future date is the stop date of a current configuration. Landvater discloses the importance of the system knowing the dates for specific shelf configuration so that the system may functionally plan for such events. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to store start and stop dates so that they are known to the system, whether implicit or explicitly, in order to more efficiently maintain attractive displays by more accurately calculating the needed stock to support the display during the display period. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 4, Landvater teaches wherein the start dates and stop dates for the one or more presentation quantities define non-overlapping periods (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein a presentation ends when another begins in the planning of the system for the same item).

As per claim 5, Landvater teaches wherein the start dates and stop dates for the one or more presentation quantities define overlapping periods (See figures 14, 15, 18, column 6, lines 45-60, column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 23, lines 45-65, wherein start and stop dates exist for different products thought the system and therefore the presentation of product A and product B would differ, and thus, overlap).

As per claims 6-7, Landvater teaches wherein the good identifier associated with good-selling location pairs includes a good number and a good description and Landvater also teaches

a good description table (See column 8, lines 5-25, wherein the good identifier includes the good number on hand and a product description, which are stored in the database).

As per claims 8-9, Landvater teaches a selling location identifier associated with good-selling location pairs includes a selling location number and a selling location description, and further includes a selling location description table and that the store is part of a retail chain (See column 8, lines 5-25 and 35-40, column 9, lines 3-27, column 24, lines 15-35, which discloses good/location combinations stored in the database for replenishment planning).

However, does not expressly disclose that the location is identified by number and description.

Landvater teaches a system that stores good/location combinations in the database, the retail stores of Landvater being part of a chain of stores. Examiner takes official notice that it is old and well known in the art that chain stores have location numbers associated with them for identification reasons. Further, it is also well known that chain stores have a location description associated with them, such as address details. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to identify the location of Landvater using number and description in order to efficiently distinguish between retail stores in the same retail chain.

As per claims 10-12, Landvater teaches wherein the set of analysis programs is adapted to basic retail goods, to seasonal retail goods, and to fashion retail goods (See column 10, lines 30-45, column 12, lines 9-40, column 15, lines 25-50, and column 19, lines 5-20, wherein the program considers basic goods, retail goods, and seasonal goods of retailers).

As per claim 13, Landvater teaches wherein the set of analysis programs operate on daily or more frequent period forecasts (See figure 8, column 10, lines 20-50, column 13, lines 30-36 and 49-58, which discusses daily forecasts).

As per claim 14, Landvater teaches wherein the set of analysis programs operate on weekly forecasts (See figure 8, column 10, lines 20-50, column 11, lines 1-25, and column 21, lines 15-35, which discuss weekly forecasts).

As per claim 15, Landvater teaches wherein the additional analysis programs operate on pairings of individual goods in individual selling locations (See column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, column 23, lines 45-65, which discuss goods at individual locations).

As per claim 16, Landvater teaches wherein the additional of analysis programs report aggregated groups of goods in individual selling locations (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 23, lines 45-65, which discuss groups of goods).

As per claim 17, Landvater discloses wherein the additional analysis programs report aggregated individual goods in groups of selling locations (See column 5, lines 1-5, column 6, lines 45-60, column 8, lines 5-25 and 50-65, column 11, lines 20-32, which discuss individual goods at multiple selling locations, and overriding occurs).

As per claim 18, Landvater teaches wherein the additional analysis programs report aggregated groups of goods in groups of selling locations (See column 5, lines 1-5, column 6, lines 45-60, column 8, lines 5-25 and 50-65, column 11, lines 20-32, column 15, lines 25-45 and 55-65, wherein goods are grouped and projected across the retailers).

As per claim 19, Landvater teaches wherein the analysis is displayed on a monitor in communication with the computer system (See figures 4 and 22, column 7, lines 35-50, column 21, lines 15-35, which discusses a monitor in connection with the system).

As per claim 20, Landvater teaches wherein the analysis is saved in spreadsheet file format (See column 21, lines 15-40, which teaches spreadsheets).

As per claim 21, Landvater discloses wherein the analysis is printed on paper, microfiche, or optical media (See column 7, lines 35-50, wherein the analysis is placed on optical media).

As per claim 22, Landvater teaches wherein the analysis is distributed by e-mail or other messaging facility (See figure'3, column 7, line 50-column 85 and 25-45, column 21, lines 15-34 and 41-50, column 22, lines 30-55, wherein the forecasting and other analysis is transmitted in a client server environment).

As per claim 23, Landvater teaches wherein the analysis generated by the additional analysis programs is utilized input to an additional process (See figures 2 and 22, column 7, lines 35-50, column 20, lines 30-50, wherein the analysis is used with other analyses).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Urban ("An Inventory-Theoretic Approach to Product Assortment and Shelf-Space Allocation") teaches inventory control system that utilize input from shelf plans.

Yang et al. ("A Study on Shelf Space Allocation and Management") discloses using shelf considerations in store logistic decisions, such as using computerized systems such as Apollo (IRI) and Spaceman (using planogramming).

Higgins ("Space Management in the 1990s") discloses using systems like Pegman, Spaceman, and Apollo to plan for inventory in retail stores, and plannograms and retailers dealing with various types of fixtures.

Robins ("Softlines, the new frontier for space management systems") discloses space management systems considering all fixtures encountered in a retail store, such as rounders, end caps, spinner racks, etc.

"ACNielsen Launches a New Version of Shelf Builder" (Newswire) teaches a system used to set up shelves accurately, including Spaceman merchandising software.

Garry ("Making Space Management Work") discloses chain stores using Apollo systems to create a master plan for each category of products in each store to create consistency across stores.

Hetherington (WO 90/04827) teaches a space management system utilized in a retail environment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BETH VAN DOREN whose telephone number is (571)272-6737. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. V.D./
February 14, 2008

/Beth Van Doren/
Primary Examiner, Art Unit 3623